

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Revocation
of the Manufactured Home Park
SUMMARY JUDGMENT
License of Ken Grund.

RECOMMENDATION FOR

On August 20, 1990 the Department of Health submitted a written notice of motion and motion for summary judgment in its favor in the above matter. The Licensee filed a memorandum of law in opposition to the motion as well as an affidavit of Kenneth D. Grund on August 31, 1990. The Department filed a reply memorandum on September 6, 1990.

Paul G. Zerby, Special Assistant Attorney General, 500 Capitol Office Building, 525 Park Street, St. Paul, Minnesota 55103, represented the Minnesota Department of Health. John F. Bonner, III, Attorney at Law, 745 Park Place Office Center, 5775 Wayzata Boulevard, Minneapolis, Minnesota 55416, represented the Licensee, Kenneth D. Grund.

Based upon the written submissions, and upon all of the filings in this case, and for the reasons set out in the Memorandum which follows,

IT IS HEREBY RECOMMENDED:

- (1) That the motion for summary judgment be GRANTED and that disciplinary action be taken against the license of Kenneth D. Grund.
- (2) That the final disposition of this matter by the Commissioner of Health be stayed thirty (30) days to permit the Licensee to apply for a judicial review of the decision of the City of Hastings.
- (3) That if the Licensee seeks judicial review of the City's decision that the Commissioner of Health stay her final decision indefinitely pending a judicial determination.

IT IS HEREBY ORDERED: That the hearing in this matter
scheduled for
September 20, 1990 is cancelled.

Dated this 13th day of September, 1990.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

A motion for summary judgment in this matter has been made by the Department of Health. Summary judgment is appropriate if there is no genuine issue as to any material fact and one party is entitled to a judgment as a matter of law. Minn. Rule Civ. P. 56.03. A genuine issue is one which is not sham or frivolous. A material fact is a fact whose resolution will affect the outcome of the case. McFarland and Keppel, Minn. Civil Practice, 1654. The Department of Health has the burden of proof and the Licensee has the benefit of that view of the evidence which is most favorable to it. Greaton v. Enich, 185 N.W.2d 876 (Minn. 1971). In a motion for summary judgment, the decisionmaker is not to resolve fact questions but rather to determine whether or not issues of fact exist. Anderson v. Mikel Drilling Company, 102 N.W.2d 293 (Minn. 1960). As the Licensee has pointed out, summary judgment should be employed only when it is clear when no issue of fact is involved and that it is not desirable nor necessary to inquire into facts which might clarify the application of the law. Donnay v. Boulware, 275 Minn. 37, 144 N.W.2d 711, 716 (1966).

Per review of the record which assumes that view of the evidence most favorable to a Licensee reveals the following: The Licensee is the managing partner for Three Rivers Mobile Home Park in Hastings, Minnesota. When the mobile home park was constructed in 1986, it included an activities building which has a storm shelter for use by residents in the event of a weather emergency. When it was constructed, the shelter satisfied state and local requirements. In early 1989 the Licensee asked the City of Hastings to approve its storm shelter as required by state statute. The Licensee's request was considered by the Hastings city Council on February 21, 1989. Prior to the meeting the planning director for the City advised the Licensee that the City would not approve the mobile home park shelter unless it was enlarged or a

second shelter built to provide at least 15 square feet per lot as required by a city ordinance. (Ex. B). At the City Council meeting the Council declined to take any action on the Licensee's request. In a letter to the Licensee dated February 22, 1989, the planning director indicated that the City Council did not have sufficient information to allow for approval of the storm shelter. (Ex. A. According to the Licensee's affidavit, the City has not provided any guidance to him as to what additional information the City Council requires. The Licensee believes that another nearby mobile home park has received approval from the City Council without being held to the same standards.

The state statute which applies in this situation is Minn. Stat. 327.20, subd. 1(7) which reads as follows:

A manufactured home park with ten or more manufactured homes, licensed prior to March 1, 1988, shall provide a safe place of shelter for park residents or plan for the evacuation of park residents to a safe place of shelter within a reasonable distance of the park for use by park residents in time of severe weather, including tornados and high winds. The shelter or evacuation plan must be approved by the municipality by March 1, 1989. The municipality may require the park owner to construct a shelter if it determines that a safe place of shelter is not available within a reasonable distance from the

park. A copy of the municipal approval and the plan must be submitted by the park owner to the department of health.

Subdivision 1(7) as quoted above was added to the statute by the Legislature in 1987. Before that the licensee was governed by subdivision 1(6) which required municipal approval of the plan but prohibited license revocation if the mobile home park had made a good faith effort to develop a plan and obtain municipal approval even if the municipality had failed to approve a plan. There is no dispute that the City of Hastings has not approved a shelter or evacuation plan at the mobile home park. Therefore no copy of the municipal approval and the plan has been submitted by the Licensee to the Department of Health.

The Department argues that there are no material facts in dispute, that the licensee is in violation of the statute since the mobile home park shelter or an evacuation plan has not been approved either prior to or subsequent to March 1, 1989 and therefore, an approval has not been submitted to the Department. The Licensee argues that summary judgment in this case is inappropriate because there is a material and genuine issue of fact as to whether the City of Hastings has wrongfully withheld its approval of the Licensee's storm shelter. He points out that the failure to approve is the only basis for license revocation. He notes that the Department does not suggest that the storm shelter at the park is inadequate and argues that no matter how diligent a park owner might be the park owner cannot meet the requirements of the statute unless the municipality complies with its obligations. The Licensee argues that due process of law would be violated if the Licensee is not able to contest the propriety of the City's refusal to approve its storm shelter. *Greater Duluth COACT v. CITY of Duluth*, 701 F.Supp. 1452, 1456 (D.Minn. 1988). The Licensee suggests that the City's refusal to approve its shelter is arbitrary and capricious, that the City ordinance was

superceded by the State Building Code and that the City's action constitutes an impermissible taking of private property without just compensation.

The Department argues that the reasonableness of the City's action is not appropriately an issue in this case. II' this is true there are no material facts in dispute and summary judgment is appropriate since the Licensee has not complied with the statute. The Department argues that it is not unreasonable for the Legislature to place approval of a plan with the municipality rather than with the Department of Health and notes that an executive branch agency lacks authority to declare a legislative enactment unconstitutional. It is concluded that whether the City's refusal to approve the storm shelter is arbitrary is not an issue since the statute plainly requires approval to be filed and provides no defense based upon unreasonable refusal to approve. Therefore, no material facts are in dispute since it is agreed that approval is lacking and cannot be filed. If the statute is unconstitutional, only a court has jurisdiction to make that determination.

This issue was considered in a prior case, In the Matter of the Revocation of the Manufactured Home Park License of Ardmor Associates , 1989 license 1073 OAH File No. 1-0900-3741-2. In that case this Administrative Law Judge pointed out that the Licensee is entitled to a determination as to whether or not the action of the City Council in refusing to approve a shelter or plan is arbitrary or capricious. The question, however, is in what forum that determination should be made. Consideration must be given to legislative

intent and judicial economy. The "good faith effort" defense to license revocation contained in the prior statute is absent from the new language adopted in 1987. This indicates that the Legislature did not intend it to be an issue in a license revocation contested case proceeding. While this certainly makes the statute more difficult to comply with, it is in keeping with the Legislature's stricter requirement that homes licensed after March 1, 1988 must provide a shelter and cannot submit an evacuation plan. The only significant difference between this case and the Ardmore case is that in this case a shelter has been built. Nonetheless, the statute specifically requires not only a safe place of shelter, it also requires that the shelter be approved by the municipality and that approval be filed with the Department. This has not been done and therefore the Department is entitled to summary judgment as a matter of law.

As a matter of judicial economy it does not make sense to permit the Licensee to contest the reasonableness of the decision by the City of Hastings in this contested case proceeding. The City is not a party to this proceeding. Additionally, the Commissioner of Health would lack authority to direct the City to approve a plan or to disapprove it in a particular manner. The customary method of challenging a municipal decision of this type is through an application to the District Court for a writ of mandamus. City of Barnum v. County of Carlton, 386 N.W.2d 770, 776 (Minn. Ct. App. 1986), Zylka v. City of Crystal, 283 Minn. 192, 167 N.W.2d 45 (1969).

It is therefore concluded, consistent with the Ardmore case, that the appropriate forum for a determination of whether or not the City acted in an arbitrary manner is the District Court. The District Court is accustomed, as the case law indicates, to a review of city actions based upon the standard of arbitrariness. The Court also has authority to order the City to approve the plan or to restructure its decisionmaking process if that is appropriate. A

consideration of the reasonableness of the City's disapproval in this proceeding would merely duplicate the judicial determination, would not finally resolve the matter, and is therefore, inappropriate. However, it is recommended that the Commissioner stay her final decision in this manner for thirty (30) days in order to permit the Licensee to initiate a proceeding in District Court. It is further recommended that the Commissioner stay issuance of a final decision pending resolution of the matter in District Court, if such an appeal is taken. The granting of the stays will alleviate the legitimate due process concerns of the Licensee by allowing a forum to resolve the propriety of the City's actions before a final decision by the Commissioner of Health.

G.A.B.